IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.557 of 2007

Subhash Sakharam Prasade ..Appellant

versus

Mahadeo Suresh & Co.
& Others ..Respondents

Mr. Chandrakant Chavan for the Appellant

Coram : S.R.Sathe, J.
Dated : 6th Sept., 2007

P.C.

1. The Appellant-respondent in Regular Civil Appeal No.39 of 1994 has filed this appeal against the Order passed by the District Judge, Ratnagiri whereby the applicant's application to re-hear the appeal and to set aside the exparte decree passed in the Regular Civil Appeal No.39 of 1994 was dismissed on the ground of limitation.

2. The facts relevant to this appeal are as under:

. The present appellant had filed suit No.8 of 1991 for eviction against the present respondents. The said suit was decreed in favour of the present appellant, the original plaintiff. Being aggrieved

by the same, the present respondent- the original defendants filed Regular Civil Appeal No.39 of 1994 in the District Court, Ratnagiri. The said appeal was allowed by the District Judge, Ratnagiri on 26.3.1998. Thereafter, on 2.5.1998, the present appellant filed Civil Application No.19 of 1998 and prayed for setting aside the ex-parte decree passed in Regular Civil Appeal No.39 of 1994 dated 26.3.1998.

3. The learned District Judge, observed that the application to re-hear the appeal and set aside the ex-parte decree was filed by the present appellant after the period of one month and six days and thus there was delay of six days in filing the application. It was also observed by the learned District Judge that the present appellant had not mentioned specifically in the application as to when he came to know about the decision of Regular Civil Appeal No.39 of 1994. Admittedly, there was also no any delay condonation application. Hence, the learned District Judge observed that it must be presumed that the present appellant had knowledge of the decision of the said Regular Civil Appeal on the date of Order i.e. 26.3.1998. He, therefore, held

that the application is barred by law of limitation and dismissed the same.

4. Being aggrieved by the same, the Original Plaintiff- respondent in Appeal No.39 of 1994 has filed the present appeal.

5. At the time of hearing, none appeared on behalf of the respondents. The learned advocate for the Appellant submitted that the learned District Judge has observed that there was delay of six days in filing the application. According to him, if the period which was exhausted in obtaining the certified copy of the judgment and order passed in Regular Civil Appeal No.39 of 1994 is taken into consideration, which period was of seven days, the application was filed within 30 days and as such the same was not barred by law of limitation. He, therefore, submitted that the Order passed by the learned District Judge, Ratnagiri is bad in law and the same be set aside.

6. It is needless to say that the application to re-hear the appeal and set aside the ex-parte decree is to be filed within 30 days as per Article

123 of the Limitation Act, 1963. The said Article runs as follows:

Description of Application	Period of Limitation	Time from which period begins to run
To set aside a decree passed or to re-hear an appeal decreed or heard ex-parte	Thirty days	The date of decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree

7. It is submitted on behalf of the appellant that the application for certified copy of the Order passed in the Regular Civil Appeal was filed on 22.4.1998 and the Appellant received the certified copy on 29.4.1998. The question is whether the appellant would get the benefit of the period between 22.4.1998 to 29.4.1998 and whether the same could be excluded from counting 30 days. For this purpose, one has to take into consideration the provision of Section 12 of the said Act. The said provision read as under:

Section 12. Exclusion of time in legal proceedings.

(1) In computing the period of

> limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
>
> (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
>
> (3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.
>
> (4) In computing the period of limitation for an application to set aside an award , the time requisite for obtaining a copy of the judgment shall also be excluded.

. From the bare reading of the above section it is very clear that the period from 26.3.1998 to 22.4.1998 is to be taken into consideration. It means that five days of March and subsequent 22 days of April will have to be taken into consideration. Then the Appellant received a copy on 29.4.1998 and he filed the appeal on 2.5.1998. So, on the third day he filed the appeal. So, it is obviously in time. In other words, even if we say that the time consumed for getting certified copy was seven days, and it is to be excluded then also as the learned

District Judge has observed that there was delay of six days, if the period taken for certified copies is excluded, the appeal was in time. So, in my opinion, the learned District Judge has failed to take into consideration the time consumed for issuing certified copy and as such he reached to a wrong conclusion.

. In view of the above, it is very clear that the order passed by the learned District Judge dismissing the application as barred by limitation is not legal and correct. Hence, I pass the following order.

ORDER

. A.O. is allowed.

. The Order passed by the learned District Judge, Ratnagiri in Civil Misc. Application No.19 of 1998 on 16.8.2000 is set aside.

. The learned District Judge, Ratnagiri, is directed to hear the Civil Misc. Application No.19

of 1998 on merits by giving due opportunity to both the parties and decide the said application according to law as expeditiously as possible.

. The parties to the present appeal are directed to appear before the District Judge, Ratnagiri on 17.9.2007.

. Under the circumstances, of the case, parties to bear their own cost of this appeal.

(S.R.Sathe, J.)